IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.6812 of 2006

Gopal H. Churi. .. .. Petitioner
v/s.
State of Maharashtra & ors. .. Respondents

Mr.G.J. Sabnis for petitioner.

Mrs.M.P. Thakur, AGP for respondent Nos.1 & 2.

Mr.Bagul B.B., Deputy Education Officer, Thane, present.

CORAM : SMT.RANJANA DESAI &
SMT.ROSHAN DALVI, JJ.

Dated : 13th December 2007

P.C. :

1. The petitioner was appointed as Assistant Teacher in J.M. Thakur High School Vangaon ("the said school") on 11.6.1979. The said school is run by the 3rd respondent. He worked in the said post for 27 years. His appointment as Assistant Teacher was duly approved by the Education Officer (Sec.) Zilla Parishad, Thane i.e. respondent No.2.

2. The petitioner is third in the common seniority list. The thrid respondent also runs R.G. Kore Madhyamik Vidalay at

Vangaon. According to the petitioner the post of Headmaster in R.G. Kore Madyamik Vidyalay became vacant. The first person in the seniority list refused to accept the post and hence, the second teacher in seniority list, Shri Vasant Bharambe was appointed as Headmaster of the said school. Since the petitioner was senior-most in the list, he was appointed by respondent No.3 in it's R.G. Kore Madyamik Vidyalay with effect from 1.4.2006. The 3rd respondent sent the proposal for approval of the petitioner's appointment to the post of Headmaster to the 2nd respondent. The 2nd respondent refused approval to the petitioner's appointment by orally informing him that since there are two posts of Headmaster one post must be reserved for candidate of scheduled caste.

3. According to the petitioner, the approach of the 2nd respondent is erroneous and illegal. Learned counsel for the petitioner drew our attention to the judgment of the Full Bench of this court in **New English High School Association, Nagpur & anr. vs. Baldev s/o Fakira ADE & anr. 2006 (2)**

Maharashtra Law Journal 882. The Full Bench was considering the question whether the rule of 50 point roster will apply to the cases where total number of posts in a cadre are three or less and the total reservation is 24 percent and what would be the minimum strength of cadre for the applicability of 50 point roster. The Full Bench considered Rule 9(10) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 which states that there should be 24 percent reservation in total number of seats of Heads and Assistant Heads. The Full Bench in paragraph 27 observed as under:-

> " 27. Undoubtedly, the Constitution mandates implementation of reservation policy. However, at the same time, it assures opportunities to all the open class category candidates. The implementation of the reservation policy should not lead to absurd result. The application of reservation percentage has to be with reference to the number of posts. It is always to be remembered that the reservation percentage is to be applied and the 50 point roster is to be followed taking into consideration the total number of posts in a cadre and at

the same time care has to be taken that other category candidates are not prejudiced in the sense that the statutorily recognised reservation percentage does not exceed while implementing the reservation policy. Undisputedly, the relevant rule requires 24% of reservation out of which 13% for the S.C., 7% for the S.T. and 4% for the D.T./N.T. Considering the 24% reservation, if one applies the 50 point roster, it would result in reservation in excess of the statutorily specified percentage. In a cadre comprising of three posts with 24% reservation rule, if one applies the 50 point roster, then the reservation even in respect of one post, would exceed 24% reservation. One-third cannot be equated to 24%. It is settled law that the reservation cannot be allowed to exceed the percentage prescribed for reservation as it would result in injustice to the candidates falling outside the reservation category. Considering the same, we are in respectful agreement with the view expressed by the Division Bench in *Somsingh's* case that 24% reservation can be applicable only in cases where there are minimum of four posts in a cadre and not otherwise."

4. In view of this, Government of Maharashtra has issued Government Resolution ("GR") dated 23.10.2007, a

copy of which is produced before us by learned AGP. The said GR, inter alia, states that if there are less than four posts of Headmaster in the school of any institution, then senior-most and meritorious teacher should be appointed to the post of Headmaster by such institutions.

5. Learned AGP, on instructions from Mr.Bagul B.B., Deputy Education Officer, Thane, who is present in the court today, states that the said GR is applicable to the petitioner's case. Learned AGP, on instructions from the aforesaid officer, states that though the petitioner's case is covered by the said GR, he will get benefits from the date of the said GR i.e. from 23rd October 2007. It is not possible for us to accept this submission. In view of the judgment of the Full Bench in **New English High School Association, Nagpur (supra)**, legal position is crystallized. The 2nd respondent ought to have granted approval to the petitioner's appointment as Headmaster from 1.4.2006. It is not disputed that he is the senior-most and meritorious person. He has worked for about 28 years with the 3rd respondent. In

the peculiar facts and circumstances of the case, we have no hesitation in observing that the petitioner should get all necessary benefits from 1.4.2006, which is the date on which the petitioner was appointed by the 3rd respondent and his proposal was sent for approval because he was eligible for appointment on that day and he has been working as Headmaster from that day till date. With these observations, the petition is disposed of.

(SMT.RANJANA DESAI, J.)

(SMT.ROSHAN DALVI, J.)